

## 14. INFRASTRUCTURE UTILITY NETWORK RATING

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The purpose of this report is to update the Committee on the claim which has been brought by Telecom New Zealand Limited against the valuations assessed by the Council's valuation service provider in respect of Telecom's infrastructure assets, and to provide background information on an appeal lodged in the High Court by the Council.

### BACKGROUND

- The Council is required to enter network utilities on the district valuation roll.
- The Rating Valuations Act and the Rules issued by the Valuer-General govern the process and requires the Council to appoint a valuer to carry out valuations. The Council has to rely on the valuations it receives.
- The obligation to have the utilities on the District Valuation Roll (DVR) was confirmed by the Court of Appeal in 1998 in *Telecom Auckland Limited v Auckland City Council*.
- The Council instructed its then Valuation Services Provider (VSP), Quotable Value New Zealand Limited (QV), to assess values for network utilities in Christchurch and place them on the roll.
- This was first done for the purposes of rating the utilities from 1 July 2001.
- The utilities were reassessed at the revaluation date 1 September 2001 for the purposes of the rating year commencing 1 July 2002.
- QV consulted with the major utility companies both individually and in industry group meetings. It would be fair to say that many utility companies were unhappy with the prospect of their utilities being valued and subsequently rated for the first time.

### THE TELECOM VALUATION

In summary, the values and rates assessed for Telecom were:

- The capital value determined by QV the year 1 July 2001–30 June 2002 was \$45m, and for the year 1 July 2002–30 June 2003, \$64m.
- CCC rates of \$318,120 were levied against Telecom for the utility network for 2001/02, (\$340,547 total).
- Telecom objected to the utility valuations for the 2001/02 and 2002/03 rating years.
- Telecom also objected to the 2002/03 year telephone exchange land and buildings valuations.
- The normal process would be for those objections to be considered and determined by QV, with Telecom then having a right of appeal to the Land Valuation Tribunal.
- In this case, however, Telecom issued judicial review proceedings directly in the High Court challenging various aspects of the way in which the utilities had been valued and placed on the roll.

### HIGH COURT JUDICIAL REVIEW PROCEEDINGS

The Council was successful in its application to the Court for the proceedings to be transferred to the Land Valuation Tribunal. In the course of the High Court judgment, it was held the more appropriate forum to consider the issues raised by Telecom was the objection process before the Land Valuation Tribunal.

In an interim decision dated 24 October 2003, the Tribunal has ruled that the valuation issued by QV for the 2001/02 year was so flawed that "... *there has therefore been a fundamental failure of the substratum of the 'valuation' to the point where it should be declared a nullity*". The practical effect of this finding is that the Council cannot recover the \$340,547 rates it has levied Telecom for that year unless the High Court appeal referred to below is successful.

The utility valuations prepared by QV were different from all other valuations provided to the Council because the valuing of utility infrastructure is new and there were not the usual benchmarks used by valuers in arriving at their valuations.

## **FUTURE CONDUCT**

Legal advice has been received from the Council's solicitors regarding the Tribunal's finding that the valuation for the 2002/03 rating year is a nullity.

The Chair of the Strategy and Finance Committee and the Director of Legal and Secretariat Services, acting under delegated authority, have decided to appeal the Land Valuation Tribunal decision that the 2001/02 values are a nullity, to the High Court.

The Council will continue to defend the 2002/03 valuation in the Land Valuation Tribunal. This will be by providing evidence of an amended value which complies with the valuation rules issued by the Land Valuation Tribunal on 5 September 2003.

A further Land Valuation Tribunal hearing to consider valuation evidence for the current 2002/03 year valuation is expected late January 2004. It is hoped that the valuers for Telecom and the Council can resolve most of the valuation issues prior to the hearing, or at least get clarity on the common areas so that a recommended value can be placed before the Land Valuation Tribunal.

The Council no longer uses Quotable Value as its valuation services provider. This role has now been contracted to the State Valuation Office ("SVO"). SVO are now engaged to prepare evidence for both the 2001/02 valuation and the 2002/03 valuation. QV evidence is now limited to explaining and defending its values of \$45m and \$64m respectively and to provide evidence on what it did in relation to the 2001/02 and 2002/03 valuations.

### **Chair's**

**Recommendation:** That the information be received.